

SERIAL 10156 IGA OFFICE SUPPLIES, RELATED PRODUCTS & OFFICE SVS, TCPN #R5023

DATE OF LAST REVISION: December 21, 2010 CONTRACT END DATE: June 30, 2011

**CONTRACT PERIOD BEGINNING JANUARY 01, 2011
ENDING JUNE 30, 2011**

TO: All Departments
FROM: Department of Materials Management
SUBJECT: Contract for **OFFICE SUPPLIES, RELATED PRODUCTS & OFFICE SVS,
TCPN #R5023**

Attached to this letter is a listing of vendors available to Maricopa County Agencies utilizing the Region 4 Education Service Center, State of Texas (C7311043300). The using agency and other interested parties may access and electronic version of this contract from the Materials Management Web site at:
http://www.maricopa.gov/materials/Awarded_Contracts/search.asp.

Please note: Price Agreement Purchase Orders (PG documents) may be generated using the information from this list. Use NIGP CODE 4250001, 6150002, SINM230, SLAW348

All purchases of product(s) listed on the attached pages of this letter are to be obtained from the listed contractor(s).

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VENDOR CONTRACT

Between OFFICE DEPOT, INC. and

THE COOPERATIVE PURCHASING NETWORK (TCPN) Office Supplies, Related Products, and Office Services

The following pages will constitute the contract between the successful vendors(s) and TCPN. Bidders shall state, in a separate writing, and include with their proposal response, any required exceptions or deviations from these terms, conditions, and specifications. If agreed to by TCPN, they will be incorporated into the final contract.

The Vendor Contract ("Contract") made and entered into by and between The Cooperative Purchasing Network, (hereinafter referred to as "TCPN") a government cooperative purchasing program sponsored by Region 4 Education Service Center, having its principal place of business at 7145 West Tidwell, Houston, TX 77092-2096,

Please refer to Addendum to the Cooperative Purchasing Network Request for Proposal attached by Office Depot, Inc.

This contract consists of the provisions set forth below, including provisions of all attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any attachment, the provisions set forth shall control.

GENERAL TERMS AND CONDITIONS

1. Freight (if applicable)

All deliveries shall be freight prepaid, F.O.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing.

2. Warranty conditions

All supplies, equipment and services shall include manufacturer's minimum standard warranty and one (1) year parts and/or labor warranty, unless otherwise agreed to in writing.

3. Customer support

The Vendor shall provide timely and accurate technical advice and sales support to TCPN staff and TCPN participants. The Vendor shall respond to such requests within one (1) working day after receipt of the request. The Vendor shall provide free training to TCPN staff regarding products and services supplied by the Vendor if required.

4. Contracts

All contracts and agreements between a Vendor and a TCPN participant shall strictly adhere to the statutes that are set forth in the Uniform Commercial Code as most recently revised and adopted by the state in which the transaction occurs.

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Contracts for purchase will normally be put into effect by means of a purchase order(s) executed by authorized agents of the participating government agencies.

5. **Tax exempt status**

All Texas government agencies participating in TCPN are exempt from payment of taxes under Chapter 20, Title 122A of the Revised Civil Statutes of Texas, for the purchase of tangible personal property. Laws of other states shall apply within those states.

Knowing the tax laws in other states is the responsibility of the vendor.

6. **Assignments of contracts**

No assignment of contract may be made without the prior written approval of TCPN. Payment can only be made to the awarded Vendor unless approved by TCPN and the participating entity making the payment.

Vendor is required to notify TCPN when any material change in operations that may adversely affect TCPN's members, whether perceived or actual, i.e. bankruptcy, change of ownership, merger, etc. Vendor agrees to provide updated financial records every year the contract is renewed. Vendor will provide this to TCPN within 30 days prior to contract renewal date. Vendor agrees to provide updated financial information beyond the renewal of the contract upon written request by TCPN. This will be provided within 30 days of the written request.

7. **Disclosures**

Vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.

Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with participants in TCPN.

The vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this contract.

Bidder must comply with the following conflict of interest procedures – local government code Chapter 176 – Disclosure of certain relationships with local government officers, providing public access to certain information.

8. **Renewal of Contracts**

Unless otherwise stated, all contracts are for a period of one (1) year with an option to renew annually for an additional four (4) years if agreed to by TCPN and the awarded Vendor. Vendors shall honor the administrative fee for a period of 30 days on any sales made based on a TCPN contract whether the Vendor is awarded a

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renewal or not. TCPN reserves the right to monitor the financial stability of any awarded contract holders on an ongoing basis at any time. As part of the renewal process TCPN will evaluate the most recent financial information to assist in the determination of continuing to renew the contract for another 12 months.

9. Funding out clause.

Any/all contracts exceeding one (1) year shall include a standard "funding out" clause. A contract for the acquisition, including lease, of real or personal property is a commitment of the Entity's current revenue only, provided the contract contains either or both of the following provisions:

Retains to the Entity the continuing right to terminate the contract at the expiration of each budget period during the term of the contract and is conditioned on a best efforts attempt by the Entity to obtain appropriate funds for payment of the contract.

10. Ordering Procedures

Purchase orders are issued by participating agencies to the Vendor per TCPN contract. Participating agencies must send purchase orders to TCPN, unless otherwise stipulated by TCPN. TCPN will review and forward orders to the Vendor within one working day. Confirmation of receipt of order may be requested by TCPN.

11. Shipments (if applicable)

The Vendor shall ship ordered products and services within two (2) to ten (10) working days. If a product and/or service cannot be shipped within that time, the Vendor shall notify TCPN as to why the product has not shipped and shall provide an estimated shipping date, if applicable. The participant may cancel the order if estimated shipping time is not acceptable.

12. Invoices

The Vendor shall submit invoices, in duplicate, to the TCPN participant. Each invoice shall include the TCPN participant's purchase order number as well as the TCPN Contract Number. The shipment tracking number or pertinent information for verification of TCPN participant receipt shall be made available upon request. If TCPN participant does not specify payment terms, the acceptable payment term for participants for carpet product is to be invoiced at time of shipment and billing for installation services is billed upon completion and accepted by TCPN participant. Jobs exceeding sixty days, periodic partial labor invoices may be generated based upon percent completion.

13. Reporting

The vendor shall electronically provide TCPN with a detailed Monthly report showing the dollar volume of all sales under the Contract for the previous Month. Reports shall be submitted to Lorraine Vuong at lvuong@tcpn.org. Reports are due on the fifteenth (15th) day after the close of the previous month. It is the responsibility of the vendor to collect and compile all sales under the Contract from participating members and submit one (1) quarterly report. The monthly report shall include: purchase order number, member name, city/town, sales total and date. The

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monthly reporting requirement may be amended to allow for quarterly reporting upon mutual agreement in writing amending this provision. A sample report is included in this solicitation. Upon mutual agreement reports may be submitted quarterly.

14. Payments

The TCPN participant will make payments directly to the Vendor.

15. Pricing

The Vendor agrees to promptly lower the cost of any product purchased through TCPN following a reduction in the manufacturer or publisher's direct cost to the Vendor. Price increases will be allowed upon proper justification. TCPN reserves the right to evaluate such requests and may decline or reduce the price increase if it deems appropriate. Or TCPN may adjust the price accordingly. However, the Vendor shall honor previous prices for sixty (60) days after written notification to TCPN of an increase.

All pricing submitted to TCPN shall include the two percent (2%) participation fee to be remitted to TCPN by the Vendor. It is the vendor's responsibility to keep all pricing up to date and on file at TCPN. All price changes shall be presented to TCPN using the same format as was accepted in the original proposal.

16. Administrative Fees

TCPN will invoice the Vendor on a monthly basis for the administrative participation fee. This may be amended to quarterly basis upon mutual consent. The invoice will be based on total sales made through the TCPN Contract with the Vendor. The Vendor shall remit payment to TCPN at net thirty (30) day terms.

17. Indemnity

The Vendor shall protect, indemnify, and hold harmless TCPN and its participants, administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the Vendor, Vendor employees or Vendor subcontractors in the preparation of the RFP and the later execution of the Contract. Any litigation involving Region 4, TCPN, its administrators and employees and agents will be in Harris County, Texas. Any litigation involving TCPN's participants shall be in the jurisdiction of the participating agency.

18. Multiple Contract Awards (if applicable)

TCPN reserves the right to award multiple contracts for each commodity category. Commodity categories are established at the discretion of TCPN.

19. State of Texas Franchise Tax and Other Taxes

By signature hereon, the prospective vendor hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas

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under Chapter 171, Tax Code or state taxes owed in states in which business will be conducted under the terms of this contract.

20. New Products

New products that meet the Contract product specifications may be added to the existing Contract. Pricing shall be equivalent to the percentage discount of other products. Vendor may replace or add product lines to an existing Contract if the line is replacing or supplementing products on Contract, is superior to the original products offered, is discounted in a similar or to a greater degree and/or if the products meet the requirements of the original solicitation. Vendor will submit revised Catalogues annually and may submit updated catalogues earlier. In the event a price increase occurs, the previous prices will remain in effect for 30 days after acceptance of the higher prices. Additionally, revised catalogues will be distributed to TCPN and its participating entities. No products may be added to avoid competitive procurement procedures. TCPN may reject any additions, without cause.

21. Promotion of Contract (Marketing Plan)

Vendor shall provide to TCPN a marketing plan for promoting the TCPN Contract. This plan shall cover all areas and states applicable. Vendor shall demonstrate how the TCPN Contract will be used as a primary contract offering to participating agencies. Encouraging participating agencies to circumvent the Contract by purchasing directly from Vendor will result in probation or termination of Contract.

Vendor must obtain prior approval from TCPN before utilizing promotional material utilizing TCPN name or logo. TCPN will not unduly withhold such approval.

22. Website Support

Vendor agrees to allow TCPN to publish their name and logo in our website.

23. Supplemental Agreements

The TCPN participant and Vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this Agreement i.e. invoice requirements, ordering requirements, on campus service, specialized delivery, etc. Any supplemental agreement developed as a result of this RFP is exclusively between the TCPN participant and Vendor. TCPN, its agents, members and employees shall not be made party to any claim for breach of such agreement. Any supplemental agreement between Vendor and the TCPN participant is exclusively between the TCPN participant and the Vendor and will be subject to immediate cancellation by the TCPN participant (without penalty to the TCPN participant) if, in the opinion of the TCPN participant, the quality, service, and specification requirements, and/or the terms and conditions are not maintained as stated in the supplemental agreement.

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24. Miscellaneous

Either party may cancel this contract in whole or in part by providing written notice. Upon cancellation, the contractor will provide assistance in moving TCPN members using the program to other programs under the TCPN program or approved by TCPN. The cancellation will take effect 30 calendar days after the other party receives the notice of cancellation. The Vendor acknowledges and agrees that continued participation in TCPN is subject to TCPN's sole discretion, and that any Vendor may be removed from the participation in the Program at any time with or without cause and must be notified in writing. All work will cease after completion of final accepted order.

Nothing in the Contract or in any other communication between TCPN and the Vendor may be construed as a guarantee that TCPN participants will submit any orders at any time. TCPN reserves the right to request additional proposals for items already on Contract at any time.

25. Certificates of Insurance

Certificates of Insurance, name and address of Vendor, the limits of liability, the effective dates of each policy and policy number shall be delivered to the TCPN participant prior to commencement of work. The insurance company shall be licensed in the State of, and shall be acceptable to, the TCPN participant. The Vendor shall give the TCPN participant a minimum of ten (10) days notice prior to any modifications or cancellation of policies. The Vendor shall require all subcontractors performing any work to maintain coverage as specified by the State in which the work is being performed.

| <u>Contractor's Liability Insurance Coverage</u> | <u>Minimum</u> |
|---|-----------------------|
| Employer's insurance: | |
| Worker's Compensation | Statutory |
| Employer's liability: | |
| Bodily injury by accident | |
| Each Occurrence | \$100,000.00 |
| Bodily injury by disease | |
| Each Employee | \$100,000.00 |
| Policy Limit | \$1,000,000.00 |

Commercial General Liability

Includes Independent Contractor's Liability; Contingent Liability; Contractual Liability; Completed Operations and Products Liability, all on the occurrence basis, with Personal Injury Coverage, Owner's Indemnity, and broad form Property Damage without the XCU exclusions. Maintain Completed Operation Liability for at least two years after the date of final completion.

Combined limits of bodily and personal injury and property damage:

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| | |
|----------------------|--------------|
| Single limit | \$500,000.00 |
| Unimpaired aggregate | \$500,000.00 |

Comprehensive automobile liability:

Include non-ownership and hired car coverage as well as owned vehicles.

| | |
|-----------------|---------------|
| Bodily damage | |
| Each Person | \$250,000.00 |
| Each Occurrence | \$500,000.00 |
| Property damage | |
| Each Occurrence | \$250,000.00. |

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SIGNATURE FORM

The undersigned hereby proposes and agrees to furnish goods and/or services in strict compliance with the terms, specifications and conditions at the prices quoted unless noted in writing. The undersigned further certifies that he or she is an officer of the company and has authority to negotiate and contract for the company named below. If addenda to this RFP are released, indicate the receipt of addenda by entering the number of addenda here: One (1)

Prices are guaranteed for (minimum of 180 days): Discounts Quoted are guaranteed for 180 days. Core Items offered are based upon a discount off list at the time of the RFP response.

Company name: Office Depot, Inc.

Address: 14600 Trinity Boulevard, Suite 300

City/State/Zip: Fort Worth, TX 76155

Telephone No.: 888-438-8998

Fax No.: 888-438-8990

E-mail address: john.lander@officedepot.com

Authorized signature: [Signature]

EXCEPTIONS TO

TERMS AND CONDITIONS INCLUDED WITHIN THE RESPONSE.

Printed name: John T. Lander

Position with company: Vice President

Sales representative's name: Michael McDonnell, Regional Sales Director

Web site URL: http://bsd.officedepot.com

Accepted by The Cooperative Purchasing Network:

Term of contract 7.12.10 to 2.28.11 2/28/13 ^{2nd 1.2.10}
7/13/10

Unless otherwise stated, all contracts are for a period of one (1) year with an option to renew annually for an additional four (4) years if agreed to by TCPN and the awarded Vendor. Vendors shall honor all participation fees for any sales made based on a TCPN Contract whether the Vendor is awarded a renewal or not.

[Signature]
TCPN Authorized Signature

Date

JASON WICKER
Print Name

Approved by Region 4 ESC by [Signature]

Date

Approved by Mary C. Obrien

Accommodation School District by _____

Date

TCPN Contract No. B5023

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**ADDENDUM TO
THE COOPERATIVE PURCHASING NETWORK
REQUEST FOR PROPOSAL
#09-09
OFFICE SUPPLIES, RELATED PRODUCTS, AND OFFICE SERVICES**

This Addendum to the Request for Proposal #09-09 for office supplies, related products, and office services ("Bid") is entered into by and between Office Depot, Inc. ("Vendor" or "Office Depot") and The Cooperative Purchasing Network ("TCPN"). The parties hereby further agree as follows:

As to Instructions to Bidders

1. Page 3 of 53, Section Purchasing Procedures Add the following as a final bullet:

It is the responsibility of the TCPN member (Participating Agencies) to reference the TCPN contract number on such orders. Vendor will not be liable or responsible for mandating member business practices.

2. Page 9 of 53, Section I. **Debarment and/or Suspension** Add the following to the section:

During 2008, Office Depot was the subject of suspension and debarment actions by the State of Georgia, but the State rescinded those actions after Office Depot showed them to be unwarranted. Specifically, in February 2008, the State of Georgia suspended Office Depot pending a debarment determination and in June 2008, the State issued its debarment determination. The State rationalized its decision primarily on its belief that a total of ten items, which it selected for testing, were priced incorrectly or were discontinued and were not identified with proper substitutes. Office Depot thoroughly researched those items and conclusively showed the State that the items were correctly priced. Office Depot also offered a solution to ensure users could more easily identify substituted products in accordance with the contract. Thereafter, following extended discussions with the State in July 2008, the State of Georgia rescinded its suspension and debarment determinations. Today, Office Depot continues to offer superior products and services to government agencies in the State of Georgia through stand-alone agreements or through our program with U.S. Communities, which we believe evidences the satisfaction of our sales and services by Georgia customers.

3. Page 10 of 53, Section J. **Signed Vendor Contract** Delete the section in its entirety.

As to Vendor Contract General Terms and Conditions:

1. Section 1 **Freight (if applicable)** Delete the section in its entirety and replace with the following:

MINIMUM ORDER VALUE. Pricing for products set forth in this Agreement is based on an instituted minimum order value of \$50.00 per order. Orders that are processed as an exception will be processed subject to a \$9.95 special handling fee.

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Office Depot stocked merchandise shall be delivered F.O.B. Destination unless the product exceeds 70 lbs. and/or 110" in length/width. In such case there will be an additional special handling charge that is communicated to the customer.

2. Section 2 **Warranty conditions** Delete the section in its entirety and replace with the following:

To the extent TCPN requires Vendor to provide warranties on products sold to TCPN, Vendor's warranties shall be limited to Vendor-branded products. For all other products, Vendor will pass through to TCPN, to the extent permissible under applicable law, all manufacturer-supplied end-user warranties.

3. Section 6 **Assignments of contracts** In the first paragraph, first sentence, delete "TCPN" and replace with the following: **either party**. Delete the second sentence in its entirety.

4. Section 8 **Renewal of Contracts** Insert:

Each contract renewal shall be mutually agreed upon in writing by both parties.

5. Section 9 **Funding out clause** Add the following to the section:

In the event that the resulting contract is terminated by reason of non-appropriation of funds as contemplated in this section, TCPN shall pay for all materials received and services rendered through the effective date of termination.

6. Section 14 **Payments** Add the following new paragraph:

Payment terms shall be net thirty (30) days from the date of invoice. TCPN Participating Agencies' credit limit shall be established by Vendor's Credit Department. Vendor reserves the right to lower TCPN individual Participating Agencies' credit limit or refuse to ship any orders if at any time: (1) TCPN Participating Agency account is materially past due and TCPN Participating Agency has not responded with a reasonable response within three (3) business days of written notice of said delinquency to work with Vendor to resolve the issues; (2) in Vendor's commercially reasonable opinion, TCPN Participating Agency credit standing becomes impaired as a result of TCPN Participating Agency payment habits having slowed down to an unsatisfactory level with all non-critical suppliers including Vendor; (3) TCPN Participating Agency financial condition becomes unstable based on TCPN Participating Agency financial reports or reputable third party ratings, or (4) if there are severe risk alerts from reputable third party credit bureaus.

7. Section 15 **Pricing** Delete in its entirety and replace with the following:

The Vendor agrees to provide list price increases and decreases at each six (6) month update of the pricing per Tab 9, Paper and Electronic Price Lists of any product purchased through TCPN. Price increases or decreases will be allowed upon 30 day written notice of Vendor System List price change. TCPN reserves the right to evaluate such requests and may decline or reduce the price increase if it deems appropriate. Or TCPN may adjust the price accordingly. However, the Vendor shall honor previous prices for thirty (30) days after written notification to TCPN of an increase or decrease.

Notwithstanding any other provision of this Agreement, if during the Initial Term or any Renewal Term of this Agreement any product category (including without limitation paper,

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toner, furniture, technology and general office supplies) is bid out or removed from Vendor's product mix, Vendor may modify pricing for the remaining categories.

Should changes in Customer's account(s) profitability occur due to factors such as (but not limited to) decrease in revenue, increased cost to service TCPN Participating Agency account(s), and unforeseen changes in market conditions, Vendor may adjust the pricing and program offered hereunder in order to attain profitability anticipated based on information TCPN provided to Vendor during the request for proposal process.

Vendor may re-evaluate program pricing and adjust pricing accordingly, or terminate this Agreement, if TCPN Participating Agencies do not meet the Minimum Annual Spend requirements described herein anytime during the Initial Term and/or any Renewal Term of this Agreement.

All pricing submitted to TCPN shall include the two percent (2%) participation fee to be remitted to TCPN by the Vendor. It is the vendor's responsibility to keep all pricing up to date and on file at TCPN. All price changes shall be presented to TCPN using the same format as was accepted in the original proposal.

8. Section 16 **Administrative Fees** Delete in its entirety and Insert the following:

Quarterly Administrative Fees. Office Depot will pay Customer a quarterly administrative fee based on Customer's paid-for purchases, net of returns, discounts and credits ("Spend"), provided that Customer is not materially delinquent in paying undisputed invoices as required under the Agreement. The Quarterly Administrative Fees shall be disbursed within sixty (60) days of each calendar quarter of the Effective Date.

9. Section 17 **Indemnity** Delete the section in its entirety and replace with the following:

Each party (the "Indemnifying Party") will defend, indemnify and hold harmless the other party and all of its officers, directors, employees, agents, successors and assigns (the "Indemnified Party") from and against any and all third-party claims, demands, actions, suits, losses, liabilities, damages (including taxes), and all related costs and expenses, including without limitation reasonable attorneys' fees (collectively "Losses") due to, arising from or relating to (a) the Indemnifying Party's breach of one of its representations, obligations, warranties or covenants set forth in this Agreement; (b) any actual or alleged infringement, violation or misappropriation of the intellectual property rights of any third party; (c) the negligent, willful or reckless act or omission of the Indemnifying Party; or (d) death, personal injury, bodily injury or property damage caused by the Indemnifying Party. The Indemnifying Party's obligation to indemnify hereunder is predicated upon the Indemnified Party (i) giving prompt written notice of any Loss, (ii) giving the Indemnifying Party the opportunity to assume sole control over the defense and settlement, if applicable, of the Loss, and (iii) providing, at the Indemnifying Party's sole expense, all reasonably requested and relevant information, assistance and authority to enable the Indemnifying Party to perform its obligations hereunder. The Indemnifying Party agrees not to settle any Loss without the Indemnified Party's written consent, which shall not be unreasonably withheld.

LIMITATION OF LIABILITY. EXCEPT FOR ANY CLAIM FOR INDEMNIFICATION, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY DAMAGES RESULTING FROM LOSS OF USE OR PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN AN ACTION BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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10. Section 20 **New Products** Insert the following:

Office Depot agrees to provide updated printed BSD catalogs at a minimum of two (2) times per year. Office Depot will provide 30 days advance notice of the intent to update pricing. Non-core pricing shall be updated per each pricing Option outlined in Tab 9, Paper and Electronic Price Lists.

11. Section 21 **Promotion of Contract** Delete the following:

Vendor shall demonstrate how the TCPN Contract will be used as a primary contract offering to participating agencies. Encouraging participating agencies to circumvent the Contract by purchasing directly from Vendor will result in probation or termination of Contract.

Insert the following:

Vendor will include a Marketing Plan outlined in Tab 6, Marketing Plan. Vendor shall demonstrate how the TCPN Contract will be used as an OPTION for possible participating agencies. Due to public laws, participating agencies have the right to choose from all contracts available on the open market and/or to choose to bid independently on their own behalf. The TCPN agreement will be offered to all participating agencies who request a review of all available contracts open to their possible use. In the event a TCPN participating agency specifically requests a presentation of the TCPN program only, the TCPN program will be the only program presented.

12. Section 22 **Website Support** After "website" add the following: in accordance with Vendor's trademark usage policy as attached herein as Exhibit A.
13. Section 24 **Miscellaneous** In the second sentence, before "assistance" insert the following: **reasonable**. In the fourth sentence, delete "or without cause".
14. Section 25 **Certificates of Insurance** In the first paragraph, third sentence, fourth line before "give" insert the following: endeavor to.
15. Add a new section as follows:

Vendor's RFP Terms and Conditions as attached herein are made a part of and included in the terms and conditions of the Bid.

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Conflict: In the event of a conflict between the terms and conditions of this Addendum and the terms and conditions of the Bid, the terms and conditions of this Addendum shall control.

OFFICE DEPOT, INC.

THE COOPERATIVE PURCHASING NETWORK

By: _____

Name: John T. Lander

Title: Regional Vice President

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Office Depot® Trademark Usage Policy

- As used herein, the term "Office Depot Trademarks" shall mean all domain names, trademarks, logos and other branding elements proprietary to Office Depot.
- The Office Depot Trademarks may not be used in any manner that expresses or might imply Office Depot's affiliation, sponsorship, endorsement, certification, or approval, of any third-party product or service.
- The Office Depot Trademarks may not be used in association with or combined with any third-party trademark in a manner that might suggest co-branding or otherwise create potential confusion as to source or ownership of the Office Depot Trademarks.
- The Office Depot Trademarks may not be included in any non-Office Depot trade name, business name, domain name, product or service name, logo, trade dress, design, slogan, or other trademark.
- When using the Office Depot Trademarks, never vary the spelling, add or delete hyphens, make one word two, or use the trademarks in a possessive or plural form.
- The Office Depot logo may only be used as provided by Office Depot electronically or in hard copy form. When using an Office Depot logo, never modify the design, add or delete any elements or words, change any colors or proportions. The logo may not be animated, morphed, or otherwise distorted in perspective or dimensional appearance.
- The Office Depot Trademarks may not be combined with any other symbols, including words, logos, icons, graphics, photos, slogans, numbers, or other design elements.
- The Office Depot Trademarks may not be imitated or used as design features in any materials.

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- The Office Depot Trademarks must include the appropriate ® or TM symbol at least at the first and most prominent mention on each visually distinguishable page of material. The ® should be used in connection with all registered trademarks and the TM should be used in connection with all non-registered trademarks.
- Each name, term or mark that is a trademark of Office Depot, or one of its subsidiaries or affiliates, must include the applicable mark and trademark statement when it is used.
Example: "_____ is a [trademark or registered trademark] of The Office Club, Inc."
- The Office Depot Trademarks may not be used in any a false, misleading, derogatory, or otherwise defamatory manner.

AMENDMENT #2
to
TCPN Contract No. R5023
for Office Supplies, Related Products and Office Services

This Amendment #2 is entered into by and between The Cooperative Purchasing Network ("TCPN") and Office Depot, Inc. ("Office Depot") and hereby amends and supplements TCPN Contract No. R5023 for Office Supplies, Related Products and Office Services effective July 12, 2010, including all amendments thereto (the "Contract"). This Amendment #2 shall be deemed effective January 1, 2011 ("Amendment #2 Effective Date").

WHEREAS, the parties executed Amendment #1 effective September 1, 2010, amending certain provisions of the Contract;

WHEREAS, the parties wish to further amend the Contract as set forth in this Amendment #2;
and

WHEREAS, this Amendment #2, upon mutual execution of the parties, shall be incorporated into the Contract.

NOW, THEREFORE, the parties agree to amend the Contract as follows.

1. Section 1(a) of Amendment #1 entitled "Core List Pricing" is deleted in its entirety and replaced with the following:
 - a. Fixed Pricing For BSD Big Book. Subject to the remaining provisions of this Section 1, Office Depot will offer fixed pricing for all items listed in the current Office Depot printed Business Solutions Division Big Book Catalog ("BSD Big Book"). Pricing for items within the BSD Big Book will be as set forth on Office Depot's Business Solutions Division website located at <https://business.officedepot.com> ("BSD Website"). Core list items will be designated with the "Best Value" icon on the BSD Website. All items in the BSD Big Book, other than items on the Core list, shall be designated with the "Preferred" icon on the BSD Website."
2. Section 1(b) of Amendment #1 entitled "Custom Core Lists" is deleted in its entirety.
3. Section 1(c) of Amendment #1 entitled "BSD Catalog Pricing" is deleted in its entirety and replaced with the following:
 - c. Pricing Updates. Pricing for products listed in the BSD Big Book may be adjusted as follows:
 - i. Paper pricing will be updated based on market conditions. Office Depot shall give TCPN thirty (30) days written notice before any paper price increase takes effect. Upon request, Office Depot shall provide TCPN with manufacturer documentation to substantiate any paper price increase.
 - ii. Ink and toner pricing will be updated on a quarterly basis on January 1, April 1, July 1 and October 1 of each year during the term of the Contract. Office Depot shall give TCPN at least thirty (30) days written notice before any ink or toner price increase takes effect. Upon request, Office Depot

shall provide TCPN with manufacturer documentation to verify any ink or toner price increase.

- iii. Core list items will be updated on an annual basis on April 1, except for paper core items and ink and toner core items, which will be updated as set forth in subsections (i) and (ii) above respectively. Office Depot shall give TCPN at least thirty (30) days written notice of such price increases before any price increases take effect. Upon request, Office Depot shall provide TCPN with manufacturer documentation to verify any price increases for such products. Notwithstanding any other provision herein, TCPN and Office Depot may add or remove core list items from time to time by mutual written agreement of the parties (including e-mail).
 - iv. For all other products not addressed in subsections (i), (ii) and (iii) above, but listed in the BSD Big Book, prices will be updated on a semi-annual basis on April 1 and October 1 of each year during the term of the Contract. Office Depot shall give TCPN at least thirty (30) days written notice of such price increases before any price increases take effect. Upon request, Office Depot shall provide TCPN with manufacturer documentation to verify any price increases for such products.
- 4. Section 1(d) of Amendment #1 entitled "Copy & Print Depot Pricing" is deleted in its entirety and replaced with the following:
 - d. Pricing for Custom Printing Services. Custom printing services, including custom imprinting services and large format prints, will be priced at a minimum discount of fifteen percent (15%) off of the local retail price.
 - 5. Section 1(e) of Amendment #1 entitled "All Other Non-Core Items" is deleted in its entirety and replaced with the following:
 - e. Pricing For Items Not In The BSD Big Book. Items not contained in the BSD Big Book, but set forth on the BSD Website, will be priced at a market competitive price at the time of purchase.
 - 6. For Participating Agencies purchasing under the Contract prior to the Amendment #2 Effective Date, Office Depot shall provide overall price protection for purchases made between January 1, 2011 and January 31, 2011 ("Price Protection Period"); such that Office Depot will provide said Participating Agencies with a credit, equal to the difference between their aggregate spend during the Price Protection Period and their aggregate spend were Amendment 2 not in effect during the Price Protection Period, assuming said spend is higher in the aggregate.
 - 7. Section 2(a) of Amendment #1 entitled "Delivery" is deleted in its entirety and replaced with the following:
 - a. The pricing set forth in this Contract includes dock and/or mailroom delivery. Furniture delivery service is available on a select group of items. The fee for furniture delivery service is \$24.99 per order in Dedicated Markets and \$39.99 in Non-Dedicated Markets. "Dedicated Market" is defined as a market within fifty (50) miles of an Office Depot distribution center or retail store. A "Non-Dedicated Market" is defined as a market that is beyond fifty (50) miles of an Office Depot distribution center or retail store. A listing of select furniture items is available from Office Depot upon request. Additional freight charges may apply for Hawaii, Alaska and Puerto Rico orders.

8. Section 2(d) of Amendment #1 entitled "Agency Annual Volume Rebate" is deleted in its entirety and replaced with the following:

d. Volume Rebates. Office Depot will pay Participating Agencies the following volume rebates:

- i. Double Rebate. As an additional incentive to Participating Agencies to begin purchasing under the TCPN program, Office Depot will pay Participating Agencies a double rebate ("Double Rebate") based on such Participating Agency's Spend from January 1, 2011 through June 30, 2011, provided that the Participating Agency is not materially delinquent in paying undisputed invoices as required under the Contract. The double rebate shall be disbursed within ninety (90) days of the first anniversary of the Participating Agency's date of initial purchase under the Contract and shall be calculated as follows:

| Spend from January 1, 2011 through June 30, 2011 | Double Rebate Percentage |
|--|--------------------------|
| \$250,000 - \$500,000 | 0.5% of Spend |
| \$500,001 - \$1,750,000 | 2.0% of Spend |
| \$1,750,001 + | 5.0% of Spend |

- ii. Agency Annual Volume Rebate. Office Depot will pay Participating Agencies an annual volume rebate ("Agency Annual Volume Rebate") based on such Participating Agency's Spend, provided that the Participating Agency is not materially delinquent in paying undisputed invoices as required under the Contract. Agency Annual Volume Rebates shall be calculated back to dollar one. The Agency Annual Volume Rebate shall be disbursed within ninety (90) days of each anniversary of the Participating Agency's date of initial purchase under the Contract and shall be calculated as follows:

| Annual Spend | Annual Volume Rebate Percentage |
|---------------------------|---------------------------------|
| \$100,000 - \$1,000,000 | 1.0% of Annual Spend |
| \$1,000,001 - \$3,500,000 | 2.0% of Annual Spend |
| \$3,500,001 + | 5.0% of Annual Spend |

9. E-Commerce Rebate. In addition to the Agency Annual Volume Rebate, Office Depot shall pay to Participating Agencies an annual E-Commerce rebate ("E-Commerce Rebate") based on the percentage of Spend conducted via E-Commerce, provided that the Participating Agency is not materially delinquent in paying undisputed invoices as required under the Contract. If annual E-Commerce rebates earned are less than \$200.00, no rebate check will be issued. The E-Commerce Rebate shall be disbursed within ninety (90) days of each anniversary of the Participating Agency's date of initial purchase under the Contract and shall be calculated as follows:

| Percentage of Annual E-Commerce Spend | Rebate Percentage |
|---------------------------------------|----------------------|
| 40% - 79% | 0.5% of Annual Spend |
| 80% - 100% | 1% of Annual Spend |

10. Alternative to Rebates. Notwithstanding the foregoing, at the Participating Agency level, Office Depot may agree to offer lower prices in lieu of anticipated rebate dollars to those Participating Agencies whose total Spend exceeds \$500,000. To implement, Office Depot will enter into agency-level agreements, which will also provide for an annual reconciliation to ensure that the earned rebate dollars correlate to the additional discounts and adjustments are made as necessary (a "true-up").
11. Administrative Fees. The parties agree that with respect to sales made after the Amendment #2 Effective Date, the quarterly administrative fees payable to TCPN shall be calculated as follows:

| Annual Spend | Administrative Fee |
|-------------------------------|--------------------|
| 0 - \$50,000,000 | 2% |
| \$50,000,001 - \$100,000,000 | 1.75% |
| \$100,000,001 - \$150,000,000 | 1.5% |
| \$150,000,001 - \$200,000,000 | 1.25% |
| \$200,000,001 | 1% |

Administrative fees shall be calculated on total Spend (as defined in the Contract) and will be paid quarterly. Year-to-date Spend will determine which fee percentages to apply for each quarter. The administrative fees are calculated incrementally with the achievement of each Spend tier. In calculating administrative fees for 2nd, 3rd and 4th quarters, administrative fee payments paid for previous quarters will be deducted.

Example:

If Spend in Q1 equals \$55,000,000, the Q1 administrative fee is calculated as follows:

$$\begin{aligned}
 \$50,000,000 \times 2\% &= \$1,000,000 \\
 \$5,000,000 \times 1.75\% &= \$87,500 \\
 \hline
 \text{Q1 Administrative Fee} &= \$1,087,500
 \end{aligned}$$

If Spend in Q2 equals \$75,000,000, the Q2 administrative fee is calculated as follows:

$$\begin{aligned}
 \text{Q1 Spend} + \text{Q2 Spend} &= \$130,000,000 \text{ Spend Year-to-Date} \\
 \\
 \$50,000,000 \times 2\% &= \$1,000,000 \\
 \$50,000,000 \times 1.75\% &= \$875,000 \\
 \$30,000,000 \times 1.5\% &= \$450,000 \\
 \\
 \text{Total:} &= \$2,325,000 \\
 \\
 \text{Line Deduction of Prior Fees} &= (\$1,087,500) \text{ (Q1 Admin Fee Paid)} \\
 \\
 \text{Q2 Administrative Fee} &= \$1,237,500
 \end{aligned}$$

12. Exhibit A entitled "Master Core List Pricing" is hereby deleted in its entirety.
13. Exhibit D entitled "Copy & Print Depot Pricing" is hereby deleted in its entirety.
14. Section 2(c) of Amendment #1 is deleted in its entirety.
15. Paragraph 5 of Addendum to the Cooperative Purchasing Network Request for Proposal #09-09, Office supplies, Related Products, and Office Services is deleted in its entirety and replaced with the following:

In the event that the resulting contract is terminated by reason of non-appropriation of the funds as contemplated in this section, each Participating Agency shall pay for all materials received and services rendered through the effective date of termination.

16. Office Depot makes no representations, warranties or covenants to provide TCPN or Participating Agencies with more favorable pricing as compared to any other Office Depot customer or group purchasing organizations.
17. Capitalized terms not otherwise defined in this Amendment will have the same meaning as set forth in the Contract. All other terms and conditions of the Contract are hereby ratified, and shall remain in full force and effect. Should any conflict, whether direct or indirect, arise between this Amendment and the Contract, this Amendment shall control in all respects and the conflicting terms of the Contract shall be considered of no effect. Additionally, the terms and conditions of the Contract, as amended, shall supersede any conflicting terms and conditions between Office Depot and a Participating Agency, unless explicitly provided otherwise.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the Amendment #2 Effective Date.

OFFICE DEPOT, INC.

By: [Signature]

Name: John T. Lander

Title: Vice President

Date: 12-6-10

THE COOPERATIVE PURCHASING NETWORK

By: [Signature]

Name: Robert A. Pechacek

Title: Chief Financial Officer

Date: 12-6-10



The Cooperative Purchasing Network (TCPN)

RFP for Office Supplies, Related Products and Office Services # 09-09

Evaluation Tab

Tuesday, October 20, 2009

| Description | Total Weighted Value | Standard Stationary Supply* | Enable IT Solutions* | Quill Corporation | Hallmark Office Products | Guy Brown Products | Gonzalez Office Products | OfficeMax Incorporated | Office Depot (revised) | School Specialty |
|--|----------------------|-----------------------------|----------------------|-------------------|--------------------------|--------------------|--------------------------|------------------------|------------------------|------------------|
| References for local governments and past performance | 10.0 | 0 | 10 | 10 | 10 | 7 | 10 | 10 | 6 | 10 |
| Nationwide Coverage and Range of Services | 5.0 | 0 | 3 | 5 | 0 | 4 | 4 | 5 | 5 | 5 |
| Project Management Skills | 5.0 | 0 | 3 | 5 | 4 | 4 | 5 | 5 | 3 | 5 |
| Product Solutions | 35.0 | 0 | 15 | 30 | 30 | 26 | 28 | 30 | 29 | 25 |
| Pricing Model and Cost Assurances | 35.0 | 0 | 10 | 28 | 31 | 25 | 27 | 31 | 30 | 25 |
| Applicable & additional products offered TCPN's participating agencies | 10.0 | 0 | 6 | 7 | 7 | 7 | 8 | 10 | 9 | 9 |
| Total | 100.0 | 0 | 47 | 85 | 82 | 73 | 82 | 91 | 82 | 79 |

* Non-Responsive Proposals

Evaluation committee for this contract:

Frank Norwood - TCPN
 Stuart Verdon - TCPN
 Phillip Vasquez - TCPN
 Jason Wickel - TCPN
 Matt Mackel - TCPN

RFP #09-09 for Office Supplies, Related Products & Office Services was advertised in accordance with the State of Texas bid laws.

It is recommended that the following awards of annual contracts be made:

| Contract | Awards |
|---|---|
| Office Supplies, Related Products & Office Services | Hallmark Office Products Gonzalez Office Products OfficeMax Incorporated Quill Corporation Office Depot |

**The Cooperative Purchasing Network (TCPN)
Questionnaire**

| Description | Standard Stationary Supply | Enable IT Solutions | Quill Corporation | Hallmark Office Products | Guy Brown Products | Gonzalez Office Products | OfficeMax Incorporated | Office Depot | School Specialty |
|---|----------------------------|---------------------|-------------------|--------------------------|--------------------|--------------------------|------------------------|--------------|------------------|
| Bidder is M/WBE (Y/N) | N | N | N | N | Y | Y | N | N | N |
| HUB Vendor (Y/N) | N | N | N | N | N | Y | N | N | N |
| Resident Bidder (Y/N) | N | Y | N | Y | N | Y | N | N | N |
| Felony Conviction (Y/N)(Public Corp(PC)) | N | N | PC | N | N | N | PC | PC | PC |
| Debarment or Suspension for the Federal Government | N | N | N | N | N | N | N | N | N |
| Debarment or Suspension for State Governments | N | N | N | N | N | N | N | N** | N |
| Can Additional Products be added to the contract | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Pricing submitted includes the participation fee (Y/N) | NA | N | Y | Y | Y | Y | Y | Y | Y |
| Vendor agrees to remit to TCPN the participation fee (Y/N) | NA | Y | Y | Y | Y | Y | Y | Y | Y |
| Additional discounts for guaranteed quantity (Y/N) | NA | Y | Y | Y | Y | Y | Y | Y | N |
| Processing information provided (Y/N) | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Vendor can supply all areas of the State of Texas (Y/N) | NA | Y | Y | Y | Y | Y | Y | Y | Y |
| Vendor can supply states outside of Texas (Y/N) | Y | Y | Y | N | Y | Y | Y | Y | Y |
| Vendor has other cooperative contracts in place (Y/N) | NA | N | Y | Y | Y | Y | Y | Y | Y |
| Vendor provided education and/or government references (Y/N) | NA | Y | Y | Y | Y | Y | Y | Y | Y |
| Vendor provided a marketing plan (Y/N) | NA | Y | Y | Y | Y | Y | Y | Y | Y |
| Provide a brief history of your company, including the year it was established. | NA | Y | Y | Y | Y | Y | Y | Y | Y |
| Provide company's official registered name | NA | Y | Y | Y | Y | Y | Y | Y | Y |
| Pieces offered are better than other Coops. | NA | NA | N | N | N | Y | N | N | N |
| List the sales staff in Texas and throughout the US | NA | Y | Y | Y | Y | Y | Y | Y | Y |
| Provide company's expectations of TCPN and TCPN partners | NA | Y | Y | Y | Y | Y | Y | Y | Y |
| List number of sales and service offices for state(s) being bid in proposal. | NA | Y | Y | Y | Y | Y | Y | Y | Y |

**The Cooperative Purchasing Network (TCPN)
Questionnaire**

| Description | Standard Stationary Supply | Enable IT Solutions | Quill Corporation | Hallmark Office Products | Guy Brown Products | Gonzalez Office Products | OfficeMax Incorporated | Office Depot | School Specialty |
|---|----------------------------|---------------------|-------------------|--------------------------|--------------------|--------------------------|------------------------|--|------------------|
| Will Company participate in TCPN promotional events | NA | Y | Y | N | Y | Y | Y | Y | Y |
| Please define your standard terms of payment. | NA | Y | Y | Y | Y | Y | Y | Y | Y |
| Describe how your company will introduce the TCPN program | NA | Y | Y | Y | Y | Y | Y | Y | Y |
| TCPN's right to audit quarterly sales reports | NA | Y | Y | Y | Y | Y | Y | Y | Y |
| Company's level of Insurance coverage | NA | Y | Y | Y | Y | Y | Y | Y | Y |
| Minimum Order Requirements | NA | Y | Y | N | N | Y | Y | Y | N |
| Signature Form | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Contractors Fingerprinting Requirements Form | Y | Y | Y | Y | N | Y | Y | Y | Y |
| Background Check Forms | Y | Y | Y | Y | N | Y | Y | Y | Y |
| Business Operations in Sudan and Iran Form | Y | Y | Y | Y | N | Y | Y | Y | Y |
| Language Pursuant to CA Procurement Rules Form | Y | Y | Y | Y | N | Y | Y | Y | Y |
| CA Labor Code Form | Y | Y | Y | Y | N | Y | Y | Y | Y |
| NON-Collusion Form | Y | Y | Y | Y | N | Y | Y | Y | Y |
| Exceptions to T's and C's | Y | Y | Y | Y | N | Y | Y | Y | Y |
| Insurance Certificate | N | N | Y | N | N | Y | Y | Y | Y |
| | | | | | | | | **Is no Longer Suspended in GA and the Debarment Determinations were lifted. | |



September 24, 2009

Request for Proposal (RFP) for Office Supplies Related Products and Office Services # 09-09

TCPN has determined that the use of a Request for Proposal (RFP) for Office Supplies Related Products and Office Services is more beneficial and advantageous to our members than the use of a Request for Bid.

TCPN contracts are used by public and private schools, colleges and universities, cities, counties, non-profits, and all governmental entities throughout the country. The use of an RFP will allow vendors to decrease submitted pricing if needed based on quantity and size of projects, as well as the ability to negotiate supplemental agreements. Each purchase made through this contract will be customized to the needs of the purchasing agency. In addition, competitive sealed bidding does not allow the ability to compare offers and determine the best value for our wide range of members.

Therefore, it is our opinion that a Request for Proposal, rather than a Request for Bid, is more advantageous to our members.

Matthew Mackel
National Contract Manager, TCPN



To: Jason Wickel

From: Phillip Vasquez
Frank Norwood
Stuart Verdon
Matthew Mackel

Date: July 12, 2010

Re: Contract Award of Office Supplies, Related Products and Office Services RFP # 09-09

We have reviewed the responses and recommend that the following companies be awarded:

**Gonzalez Office Products
Hallmark Office Products
OfficeMax Incorporated**

**Office Depot
Quill Corporation**

The recommended vendors submitted offers that were determined to be most advantageous to The Cooperative Purchasing Network (TCPN) members, based upon the bidder tabulation. All the recommended respondents were determined to be competitively priced and strong for the specified products and services.

We believe all recommended vendors demonstrate the ability to provide and perform the services requested in the proposal. We will monitor their performance and determine at the end of each year if they are eligible for renewal with each new term.

This multiple award is recommended as most advantageous to TCPN's members. In order to serve the entire nation, a multiple award is recommended to provide any governmental agency with complete coverage of commodities, services and any other offering within the scope of proposal.

Please let us know if you have any questions.

Phillip Vasquez
Contract Specialist



July 12, 2010

Office Depot, Inc.
ATTN: Mr. John T. Lander, Vice President
14600 Trinity Boulevard, Suite 300
Fort Worth, TX 76155

Dear Mr. Lander:

The Cooperative Purchasing Network (TCPN) is pleased to announce that Office Depot, Inc. has been awarded an annual contract for the following services based on the proposal submitted to TCPN:

Commodity

Office Supplies, Related Products
and Office Services

Contractor

Office Depot, Inc.

The contract is effective immediately and will expire on February 28, 2012. The contract may be renewed annually for up to an additional three years, if mutually agreed to by TCPN and Office Depot.

The partnership between Office Depot and TCPN can be of great help to participating agencies. Please feel free to provide copies of this letter to your sales representatives to assist in their work.

If you have any questions or concerns, please feel free to call Matthew Mackel at the TCPN office at 713-744-6349.

Sincerely,


Jason Wickel
TCPN, Director


Robert A. Pechacek
Region 4 ESC, Deputy Executive Director, School Operations/CFO



AMENDMENT #1
to
TCPN Contract No. R5023
for Office Supplies, Related Products and Office Services

This Amendment #1 ("Amendment") is entered into by and between The Cooperative Purchasing Network ("TCPN") and Office Depot, Inc. ("Office Depot") and hereby amends and supplements TCPN Contract No. R5023 for Office Supplies, Related Products and Office Services effective July 12, 2010 (the "Contract"). This Amendment shall be deemed effective September 1, 2010 ("Amendment Effective Date").

WHEREAS, TCPN issued Request for Proposal #09-09 ("RFP") on September 24, 2009;

WHEREAS, Office Depot submitted a response to such RFP ("Response");

WHEREAS, TCPN awarded Office Depot the Contract effective July 12, 2010;

WHEREAS, the Contract includes the RFP and the Response;

WHEREAS, the parties wish to amend certain terms and conditions of the Contract as set forth in this Amendment; and

WHEREAS, this Amendment, upon mutual execution of the parties, shall be incorporated into the Contract.

NOW, THEREFORE, the parties agree to amend the Contract as follows.

1. **PRICING.** Within its Response to the RFP, Office Depot presented TCPN with three (3) pricing options (see Tab 9 of the Response). Office Depot and TCPN have jointly reviewed the options. The parties have agreed that the pricing terms and conditions set forth below shall be incorporated into the Contract as of the Amendment Effective Date.
 - a. **Core List Pricing.** Office Depot agrees to supply to agencies purchasing under the Contract ("Participating Agencies") those office products and services as set forth in Exhibit A attached hereto (the "Master Core List") at the prices set forth therein. With the exception of paper and toner/ink items, Master Core List pricing will be updated in February and August of each year during the term of the Contract. Pricing for paper and toner/ink items on the Master Core List will fluctuate with market conditions, provided Office Depot gives TCPN at least thirty (30) days written notice before any paper or toner/ink price increase takes effect. Upon request, Office Depot shall provide TCPN with manufacturer documentation to substantiate any paper and toner/ink price adjustments. In the event items identified on the Master Core List are discontinued by Office Depot's supplier, Office Depot agrees to make all reasonable efforts to identify and replace any discontinued item with a product of equal or better value that is available within Office Depot's stocked inventory. Notwithstanding any other provision herein, TCPN and Office Depot may update the Master Core List from time to time by mutual written agreement (including e-mail).
 - b. **Custom Core Lists.** In addition, any Participating Agency with annual Spend¹ of at least \$100,000 will have the option of creating a unique custom core list with a maximum of 200 additional core items (each a "Custom Core List"). For purposes

¹ A Participating Agency's annual Spend will be calculated beginning on the date of initial purchase under the Contract and ending twelve (12) months thereafter.

of this Amendment, "Spend" shall mean a Participating Agency's paid-for purchases, net of returns, discounts and credits. A Participating Agency eligible to create a Custom Core List may choose from the items set forth on Exhibit B. Pricing for Custom Core List items is set forth in Exhibit B attached hereto. With the exception of paper and toner/ink items, Custom Core List pricing will be updated in February and August of each year during the term of the Contract. Pricing for Custom Core List paper and toner/ink items will fluctuate with market conditions, provided Office Depot gives TCPN at least thirty (30) days written notice before any paper or toner/ink price increase takes effect. Upon request, Office Depot shall provide TCPN with manufacturer documentation to substantiate any paper and toner/ink price adjustments. In the event any Custom Core List items are discontinued by Office Depot's supplier, Office Depot agrees to make all reasonable efforts to identify and replace any discontinued item with a product of equal or better value. Notwithstanding any other provision herein, a Participating Agency and Office Depot may update a Custom Core List from time to time by mutual written agreement (including e-mail). Office Depot shall provide TCPN with the custom core information on an account-by-account basis upon written request of TCPN.

- c. BSD Catalog Pricing: Items not on the Core List ("Non-Core Items") but identified in the printed Office Depot Business Solutions Division priced catalog ("BSD Catalog") in circulation at the time of order placement will be priced as follows:
 - i. Paper, toner and ink products will be priced at a discount of ten percent (10%) off the price set forth in the "Your Price" column in the BSD Catalog.
 - ii. All other products in the BSD catalog (except for the Exception Categories identified in subsection (f) below) will be priced at a discount of twenty (20%) off the price set forth in the "Your Price" column in the BSD Catalog.
 - iii. Initial pricing for Non-Core Items in the BSD Catalog is set forth in Exhibit C attached hereto. Pricing for Non-Core Items in the BSD Catalog will be updated in February and August of each year during the term of the Contract. TCPN will receive at least thirty (30) days written notice before price adjustments become effective.
- d. Copy & Print Depot Pricing. Copy & Print Depot products and services set forth on Exhibit D shall be priced in accordance with Exhibit D. Copy & Print Depot pricing shall be updated in February and August of each year during the term of the Contract.
- e. All Other Non-Core Items. Non-Core Items that are not identified in subsection (c) above shall not be subject to the discounts or pricing methodology otherwise set forth in this Contract. Rather, prices for such items will be established by Office Depot in its discretion and will be presented to the Participating Agency at the point of sale or otherwise at the time of order placement.
- f. Exception Categories. Notwithstanding anything herein to the contrary, products in the following categories (as such categories are identified on www.officedepot.com) may be priced at the price set forth on www.officedepot.com at the time of the order: Technology, Custom Printing, Promotional Products, and Warranties.
- g. Pricing Adjustments. Notwithstanding any other provision of the Contract, prices are subject to adjustment at any time during the term in the event of significant demonstrable increases in costs to Office Depot resulting from changes in market

conditions, stock availability, energy/utility costs and unanticipated supply chain costs upon mutual written agreement. Office Depot shall provide TCPN with all reasonably requested documentation as necessary to substantiate any price increases.

- h. Discontinued Products. Products may be discontinued at any time, without notice to TCPN or Participating Agencies.

2. ADDITIONAL TERMS. The parties agree to add the following provisions to the Contract:

- a. Delivery. The pricing set forth in this Contract includes dock and/or mailroom delivery. Additional freight charges may apply for items exceeding 70 lbs. in weight and/or 110" in length/width, furniture, Hawaii, Alaska and Puerto Rico orders, special orders and/or rush deliveries. Orders under \$50.00 will be subject to a \$5.95 special handling fee.
- b. Tier I Opportunities. Office Depot has developed a diversity purchasing initiative (the "Tier I Program") that can be utilized by end customers to purchase products and services from small businesses, minority- or women-owned suppliers and service disabled veteran suppliers. In the event a Participating Agency wishes to purchase under the TCPN Contract but also elects to utilize an Office Depot Tier 1 partner in connection with such purchases, TCPN shall permit the Participating Agency to participate in Office Depot's Tier I program, provided such participation is in accordance with the terms of the Contract. The parties agree that the Participating Agency shall pay a fee in addition to the pricing offered under the Contract in order to participate in the Tier 1 Program. The fee shall be negotiated among the Participating Agency, the Tier I partner and Office Depot.
- c. New Customers. In the event an agency eligible to purchase under the TCPN program chooses to purchase under this Contract, Office Depot may, in its sole discretion, offer the same or similar pricing that the agency was receiving immediately prior to joining TCPN.
- d. Agency Annual Volume Rebate. Office Depot will pay Participating Agencies an annual volume rebate ("Agency Annual Volume Rebate") based on such Participating Agency's Spend, provided that the Participating Agency is not materially delinquent in paying undisputed invoices as required under the Contract. Agency Annual Volume Rebates shall be calculated back to dollar one. The Agency Annual Volume Rebate shall be disbursed within sixty (60) days of each anniversary of the Participating Agency's date of initial purchase under the Contract and shall be calculated as follows:

| Annual Spend | Annual Volume Rebate Percentage |
|--------------|---------------------------------|
| \$100,000 + | 1% of Annual Spend |

- e. College Bookstore Program. Colleges and universities purchasing products under the Contract and re-selling those products through their on-campus bookstores are eligible to receive additional rebates (the "TCPN Bookstore Program") in accordance with the requirements herein. To qualify for the TCPN Bookstore Program, a Participating Agency shall execute a TCPN Bookstore Program Participation Agreement in the form of Exhibit E attached hereto. Upon Office Depot's receipt of a fully executed TCPN Bookstore Program Participation Agreement, such Participating Agency shall be eligible to receive quarterly rebates as set forth below ("Bookstore

Rebates"), provided that the Participating Agency is not materially delinquent in paying undisputed invoices as required under the Contract

| Quarterly TCPN Bookstore Program Spend | Rebate Percentage |
|--|-------------------|
| \$25,000 - \$49,999.99 | 2% |
| \$50,000 - \$74,999.99 | 4% |
| \$75,000 - \$99,999.99 | 6% |
| \$100,000 - \$149,999.99 | 8% |
| \$150,000 - \$374,999.99 | 10% |
| \$375,000.00 and above | 14% |

- i. Bookstore Rebates are calculated on Spend attributable to products sold in connection with the TCPN Bookstore Program only.
- ii. Bookstore Rebates are calculated on Spend back to the first dollar spent.
- iii. Bookstore Rebates shall be disbursed within sixty (60) days of the end of each calendar quarter based on Spend during such calendar quarter.
- iv. Master Core List pricing and Custom Core List pricing shall not apply to products sold to Participating Agencies for re-sale pursuant to the TCPN College Bookstore Program. However, all remaining pricing provisions set forth in the Contract shall apply to purchases made in connection with the TCPN Bookstore Program.
- v. A college or university participating in the TCPN Bookstore Program is still eligible to receive an Agency Annual Volume Rebate provided such college or university satisfies the requirements set forth in Section 2(e) above. However, products purchased for re-sale in connection with the TCPN Bookstore Program shall not be considered for purposes of calculating Agency Annual Volume Rebates.

3. **DELETED TERMS**. The parties agree to delete the following terms from the Contract

- a. The E-commerce incentive is deleted in its entirety (see Tab 9 of Response, Section 1).
- b. The point-of sale discount is deleted in its entirety (see tab 9 of Response, Section 2).

Capitalized terms not otherwise defined in this Amendment will have the same meaning as set forth in the Contract. All other terms and conditions of the Contract are hereby ratified, and shall remain in full force and effect. Should any conflict, whether direct or indirect, arise between this Amendment and the Contract, this Amendment shall control in all respects and the conflicting terms of the Contract shall be considered of no effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year last shown below.

OFFICE DEPOT, INC.

By: [Signature]

Name: John T. Lander

Title: Vice President

Date: 9/1/10

THE COOPERATIVE PURCHASING NETWORK

By: [Signature]

Name: Robert A. Pechacek

Title: Chief Financial Officer

Date: 8/26/10





Subject: Authorization of Contract Award

To: Andy Pechacek
From: Jason Wickel
Date: July 12, 2010

BACKGROUND INFORMATION

The Region 4 Education Service Center Board of Directors established The Cooperative Purchasing Network (TCPN) on June 17, 1997 to provide cooperative purchasing opportunities to school districts and public entities statewide. The Board of Trustees delegated responsibility for approval of new contracts to Region 4 ESC Deputy Director, Financial Services/CFO.

ADMINISTRATIVE CONSIDERATIONS

Award(s) of annual contract(s) in compliance with the bid laws of the State of Texas are recommended.

RECOMMENDATIONS

TCPN recommends the following contract be awarded based on the Request For Proposal (RFP) process:

| Contract | Vendor | Term of Contract |
|---|--------------------|--|
| Office Supplies, Related Products and Office Services | Office Depot, Inc. | 20 Months with three (3) annual renewals |

ACTION REQUIRED

Support documentation has been attached for reference. Please indicate your decision below and return.

☒ Approve

☐ Disapprove

Signature

Date

The answer is 4®

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